

MINUTES
CLAY COUNTY PLANNING COMMISSION
7:00 P.M., TUESDAY, APRIL 21, 2015
MEETING ROOM B - THIRD FLOOR COURTHOUSE

Members Present: Mark Klevgaard, Tom Jensen, Andrea Koczur, Dan Langseth, Paul Krabbenhoft, William Davis, Jenny Mongeau, Amos Baer, David Heng, Mike Hulett

Members Absent: Tim Brendemuhl

Others Present: Tim Magnusson, Colleen Eck, Jenny Samarzja, Kathy Ihle, Kirk Rosenberger, Charlotte Tuhy, Joel Hildebrandt, Bruce Bang, B. Mikkelsen, Kevin Martin, Emily Grier, Frank Gross, Mary Veit, Brent Strand, Kristie Leshovsky, Ray Kvalvog

Chair Paul Krabbenhoft called the meeting to order at 7:00 p.m.

APPROVAL OF AGENDA

On motion by Amos Baer, seconded by Tom Jensen, and unanimously carried, the Commission approved the agenda.

APPROVAL OF MINUTES

On motion by Jenny Mongeau, seconded by Andrea Koczur, and unanimously carried, the Commission approved the minutes from March 17, 2015 as written.

CITIZENS TO BE HEARD

There were none.

BRUCE BANG - INTERIM USE REQUEST

The applicant is seeking approval of an Interim Use Permit to allow the placement of up to six recreational vehicles/travel trailers on his property. The property is approximately 15 acres in the SW Quarter, SW Quarter, Section 26, T138N, R44W (Parke Twp). Said property is zoned Agricultural General (AG) with a Resource Protection-Aggregate (RP-Agg) overlay zone.

On motion by Amos Baer, seconded by Andrea Koczur, and unanimously carried, the Planning Commission opened the public hearing.

Tim Magnusson, Planning Director, stated that two years ago there was a similar application for temporary permitting for the same site. Aerials showed the site which provides frontage and access on 280th St. S. The property is currently used as a farmstead, with a house and several outbuildings. The proposed use can meet the setbacks as found in the Clay County Development Code. Magnusson had checked with Sanitarian Bruce Jaster, but he was unable to find the location of the septic system on the site. The campers were in a different location at the site two

years ago. This request is an after-the-fact issue again as the campers have been there since the first part of April. Magnusson noted that the biggest concerns are the sewage and garbage. A third question is the intended source of drinking water. They will need to find out if there is a contract with a septic hauler for appropriate disposal. The applicant noted that the campers will be off the site by the middle of May, but Magnusson suggested giving him some leeway for the end date. Minnesota Department of Health has legislation in the process right now for short-term camping, but it is limited to 14 days. Magnusson added that the campers should be parked at least 20 feet from the septic system on the property.

The staff recommendation is to approve the request with the following, minimum condition(s) if it is granted:

1. No more than six (6) campers may be placed on the site.
2. All campers must meet the setbacks required for structures as listed in the Clay County Development Code.
3. Evidence of proper sewage disposal and solid waste disposal shall be provided to Clay County Environmental Health.
4. All campers must be removed from the site no later than May 31, 2015.
5. Knowledge of where the drinking water is coming from.

Chair Krabbenhoft asked if there was anyone present who wished to speak for or against the request.

The applicant, Bruce Bang, stated that the septic system is north of the house and campers are actually south of the house not on the west as he had marked on his site plan. The campers are Knife River employees who are currently crushing aggregate material in the applicant's gravel pit. They get water from his well with a garden hose. He has Dewey's Septic System come out and pump the sewage tanks on a regular basis. They use a dumpster at the nearby construction site for their garbage. They are all hard-sided, bumper-hitch campers. Bang noted that the mining company called him on a Saturday and wanted to be out there on the following Monday, not giving him any time to get a permit before them arrived. They would like to extend their end date to June 15. They have another job to go to after the middle of June. Magnusson informed the applicant that the company recently requested to operate out of the Bang pit 24/7 until the end of July. Bang noted that he has no problem with them staying there as long as they are working there. His nephew actually lives at this site. Magnusson noted that Bruce Jaster would like to see Dewey's Septic Co.'s receipts. Bang stated that he has never had an issue with garbage out there. The campers work long days and like to be close to the worksite. His permit with Knife River Materials expires at the end of this year, but he believes that they will renew it.

Chair Krabbenhoft asked if there is anyone to speak for or against the request.

On motion by Tom Jensen, seconded by Amos Baer, and unanimously carried, the Planning Commission closed the public hearing.

The Planning Chair read the Findings of Fact for Conditional Use Permits and the Planning Commission did not feel that any items needed to be addressed further.

On motion by Mark Klevgaard, seconded by Jenny Mongeau, and unanimously

carried, the Planning Commission approved the request from Bruce Bang for an Interim Use Permit to allow the placement of up to six recreational vehicles/travel trailers on his property in the SW ¼ SW ¼ Section 26, Parke Twp. with the following conditions:

- 1. No more than six (6) campers may be placed on the site.**
- 2. All campers must meet the setbacks required for structures as listed in the Clay County Development Code.**
- 3. Receipt of evidence of proper sewage disposal and solid waste disposal shall be provided to Clay County Environmental Health.**
- 4. All campers must be removed from the site no later than July 31, 2015.**
- 5. Proper knowledge of where drinking water is coming from.**

JOEL HILDEBRANDT & CHARLOTTE TUHY – INTERIM USE REQUEST

The applicant is seeking approval of an Interim Use Permit to allow the establishment of a pet boarding kennel and grooming facility. Said facility would also conduct retail sales of household pet-related food and other products. The affected property is Lot 1, Block 1, Gloryland Subdivision located in the NE Quarter NW Quarter, Section 11, T139N, R45W (Hawley Twp) in the Highway Commercial (HC) zoning district.

On motion by Mike Hulett, seconded by Amos Baer, and unanimously carried, the Planning Commission opened the public hearing.

Tim Magnusson, Planning Director, stated that a kennel may be allowed as an interim use in this zoning district. The subject property is approximately 1.258 acres and there have been several different uses at the site. The applicant intends to remodel the building and use it for a pet daycare, kennel, and grooming facility. The Board of Adjustment approved variances for both the lot size and setback to the property line prior to this meeting. The applicants are also buying the lot next to this one. If they combine the two lots the setback to the adjacent property line will not be an issue. The Standards for Kennels in the County Development Ordinance are as follows: Minimum lot area is five (5) acres; the facility has to have two hundred fifty feet (250') of continuous frontage on a public street; and buildings and fenced running areas are to be located at least fifty feet (50') from any property line. Magnusson noted that the septic system is on the south side of the building and the well is on east side of the building. The layout of the proposed interior plan was shown, and included a bathroom and grooming area. The outdoor area will be placed away from other businesses. Sound or noise should not be a nuisance for the other properties. Water usage questions can be directed to the applicant. The applicant currently has a purchase agreement for the property. Upon transfer of the property, a septic certification will be needed. David Heng asked why the City of Hawley has not annexed this commercial subdivision into the city. Magnusson noted that the city was not pleased about the County permitting this subdivision right outside of Hawley, but the request came in, received approval, and several of the lots have been developed.

Chair Krabbenhoft asked if there was anyone who wished to speak for or against the request.

Joel Hildebrandt, the applicant, stated that they have been planning to have a kennel here for about five months. He noted that water use associated with grooming is minimal, but he will do what the County Sanitarian needs him to do. He added that the closest residence to this site is

actually across Hwy 10. They plan to take the overhead door out and put a wall in its place. Typically, no one would stay at the kennel overnight. They would have routine hours of operation during the days. They may allow some evening pick-ups if necessary. There are state guidelines for kennels that they will be following, and the local state inspector is in Fergus Falls. The first inspection would be after they open for business. When asked, the applicant noted that he has not thought about signage for the site. A sign may go on the building, and he'll look into the size requirements.

On motion by Andrea Koczur, seconded by Amos Baer, and unanimously carried, the Planning Commission closed the public hearing.

The Planning Chair read the Findings of Fact for Conditional Use Permits and the Planning Commission did not feel that any items needed to be addressed further.

On motion by Andrea Koczur, seconded by Jenny Mongeau, and unanimously carried, the Planning Commission approved the request for an Interim Use Permit for Joel Hildebrandt and Charlotte Tuhy to allow the establishment of a pet boarding kennel and grooming facility, along with retail sales of household pet food and other related pet products. The property is described as Lot 1, Block 1, Gloryland Subdivision, in the NE¼ NW¼ Section 11, Hawley Twp. The following conditions were placed on the permit:

- 1) Signage is restricted to a maximum of 128 sq. ft. or 5% of wall.**
- 2) Maximum of 25 dogs, of any age, may be housed on the site at any given time.**
- 3) Prepare and submit a parking plan for a minimum of 10 parking spaces to the Planning Office for review and approval.**
- 4) Hours of operation at the site will be from 6:00 a.m. to 9:00 p.m., unless there is an emergency situation.**
- 5) Permit term expires upon sale of the property.**
- 6) Approval of septic system due to change in use at the site.**

JOEL HILDEBRANDT & CHARLOTTE TUHY – AMEND CONDITIONAL USE

The applicant is seeking approval of an amendment to an existing Conditional Use Permit (CUP) for an Agricultural Service Establishment providing kennel and horse boarding services. That permit allows a maximum of 42 horses on the property at any given time. The applicant is requesting that the maximum number of horses allowed be increased to 95. The property is approximately 43 acres located in the NW Quarter NW Quarter Section 1, and NE Quarter NE Quarter Section 2, T139N, R44W (Egdon Twp). The site is located in the Agricultural General (AG) zoning district.

On motion by Bill Davis, seconded by Amos Baer, and unanimously carried, the Planning Commission opened the public hearing.

Tim Magnusson, Planning Director, stated that the original CUP for this site was heard not too many years ago. The animal density requirement at that time was 42 horses. That number is strictly for horses, and does not include dog boarding. The applicants have added additional shelters for the horses at their ranch (Hightail Horse Ranch and Rescue). Magnusson displayed aerials of the arena and pasture areas. The applicants recently got registered as a feedlot. They

currently have 85 horses on the site and have not been able to maintain vegetative cover. They have been working with the County Feedlot Officer Craig Halverson. The parcel lines and neighboring properties were pointed out. Because they are involved in the animal rescue program, too, they have no idea how many animals will come in, especially with larger seizures of animals. They currently have numerous rescue horses accounting for the high number of animals. A letter was received in the Planning office regarding this request from Rich and Mary Veit. There was mention of horses wandering onto other properties including the nearby Wildlife Production Area (WPA) while they are being exercised. Magnusson has been in contact with the local US Fish and Wildlife and was told they do not want horses on the WPA areas because invasive species can be transferred through manure. They do not want any noxious weeds brought onto this property. Another letter was supplied by the applicant before the meeting and was written in support of the ranch and rescue operation by Pastor Dean Grier who is a volunteer and supporter of the ranch.

The staff recommendation is for approval of the request to increase the maximum number of horses allowed on the site from 42 to 95. All other conditions of the permit should remain the same. Attorney Jenny Samarzja stated that they have doubled the number of animal units that were allowed in their first permit. David Heng suggested that since 95 is so close to the 100 horses/animal unit threshold, maybe they should consider getting a Manure Management Plan and there wouldn't be an issue if they went over 100 horses. Magnusson noted that they are asking for 95 horses and that was the number advertised for this meeting.

The applicants, Charlotte Tuhy and Joel Hildebrandt handed out their Hightail Rescue 2014 Annual Report. Tuhy noted that when they ride horses off the property, they are no longer riding on the wildlife area or the Veit property. They raise Arabian horses and they have horse boarders who lease space with them. They currently have 80 horses, with 30 of them being rescue horses. They work with the local law enforcement agencies on taking rescue horses. They have a program in which someone can pick out a rescue horse for adoption and then start the screening process and mentoring program. Currently they have three horses being adopted out, but are waiting for fencing to go up and some training to be finished. Another twelve to 15 more horses will be moved to foster pastures. They tend to have more horses on site in the winter and less in the summer. They took in 15 more rescue horses in January, and the horses usually move back off the site in ones or twos. This year they have been riding along a minimum maintenance road and in the ditches.

Tuhy stated that they have documented over 6,000 hours of volunteer time and lots of community support. They are making a difference. They compost the horse manure and quite a bit of it is sold by the pick-up load. A heavy equipment company is used when they need to move/haul larger amounts of manure. They have not checked into a Manure Management Plan, and would like to stay closer to 60 horses at the site. The Hightail Ranch operates as a 501 nonprofit organization. They will sometimes trade back and forth with other horse facilities. Two to three really sick horses is a lot to handle. There have been no law enforcement seizure animals since January. When there is a seizure, cognitive testing is started on the way to the ranch, and proper immunizations come later. They have isolation pens and have the animals quarantined in groups. They get donations and they have a local farm veterinarian who treats the facility very well. The owners worm the animals and do the stool testing at the ranch. If needed, they would use high ground for burying an animal and would stay out of any drainage areas, or have NDSU

incinerate the animal. They have, on occasion, taken animals from other states. They have sheds in their pastures and horse stalls in their barns. They also have an indoor training pen and two outdoor arenas on the site. They hay ditches and get other hay locally.

Chair Krabbenhoft asked if there was anyone present who wished to speak for or against the request.

On motion by Dan Langseth, seconded by Dave Heng, and unanimously carried, the Planning Commission closed the public hearing.

The Chair read the Findings of Fact for Conditional Use Permits and the Planning Commission did not feel that any items needed to be addressed further.

Davis asked what would happen if the hay goes way up in price, and Tuhy noted that they would have to tell law enforcement if they could not financially handle any more horses if it got to that point. She added that law enforcement needs to know there are resources available before they go out and seize neglected animals. They have never had complaints about the traffic or dust involved with horses, manure hauling, and haying. They have been respecting the WPA borders and trying to be good neighbors.

On motion by Amos Baer, seconded by David, and unanimously carried, the Planning Commission approved the request from Joel Hildebrandt and Charlotte Tuhy to amend an existing Conditional Use Permit (Doc #673548) for an Agricultural Service Establishment allowing 42 horses to be increased to allow 95 horses on property located in the NW¼ NW¼ Section 1 and NE¼ NE¼ Section 2 in Eglon Township.

BRB LLC – PETITION FOR REZONING

The applicant is seeking approval of a petition to rezone a 7.66 acre parcel. The parcel is currently zoned Highway Commercial (HC) with an Urban Expansion District (UED) overlay zone. The request is to remove the UED zoning from the parcel. Said parcel fronts on 46th Ave. S. and abuts the City of Moorhead. It is located in the NW Quarter SE Quarter, Section 29, T139N, R48W (Moorhead Twp).

On motion by Bill Davis, seconded by Amos Baer, and unanimously carried, the Planning Commission opened the public hearing.

Tim Magnusson, Planning Director, stated that he had several emails and phone calls from area residents who were against the request, but their concerns were put to rest when they were shown exactly where the property is located. The property has been used as agricultural land and there are no structures on the site. An aerial view of the area showed Red River Trails and a rural platted commercial subdivision (MAR-BRAK Subdivision) that was never developed. There were two houses located on the lots directly to the west, but just one house remains there. In 1992, the County approved a petition to rezone a parcel of land to Highway Commercial (HC) zoning. The property that is being discussed today was mistakenly included in the HC zoning when the remapping was done. It has been represented as commercially zoned property and because of that, Assistant County Attorney Jenny Samarzja recommended that we maintain it as

such. Besides the HC zoning, this property is also included in the Urban Expansion District (UED) zoning which is an overlay district that surrounds Moorhead and Dilworth. The intent of UED zoning is to give the incorporated cities some say in what is allowed in this area. At such time that a city annexes property, it hopefully would not be a huge difference from what is in the city. The request is to remove the UED overlay from this eight acre parcel of land and leave the HC zoning, allowing the applicant to propose construction of a 101-unit commercial storage facility on the site. The facility would cover approximately one-third of the entire property as shown in the applicant's drawing.

Magnusson commented that Moorhead Township also has a zoning ordinance and has this property zoned as Agricultural Preservation-1. The township would also have to rezone it to HC before any type of commercial use could be established there. When the County's Comprehensive Plan was being updated, the county asked the cities for their current land use plans. A commercial use in this area does not conform to the city's 2009 Future Land Use Map (FLU) or Growth Area Plan (GAP). These documents guide the future development of this property and surrounding properties toward low density residential development. The UED zoning was intended to provide some degree of protection to the incorporated communities for properties near their municipal boundaries.

The staff recommendation is for denial of this request for the following reason: The proposed zoning change and use is contrary to the Clay County Comprehensive Plan and the City of Moorhead 2009 Future Land Use Map (FLU) or Growth Area Plan (GAP). The Planning Commission's recommendation on this request will be forwarded to the County Board of Commissioners for final action. Questions arose among the Planning Commissioners about why the property has not been annexed and why it is in limbo. Magnusson noted that a concept called "ghost platting" can also be done in the UED zoning and he explained how it works.

Two of three partners from BRB, LLC, Brent Strand and Ray Kvalvog, introduced themselves as the applicants. They noted that they recently built the Microtel Hotel as well as apartment buildings in Moorhead. They were recognized at a national conference this year for the hotel. They have done an extensive feasibility study, and noted that storage units would be an asset to this area, and would be handy and convenient at this site. They would put up nice looking structures for the storage units, have them gated, with limited hours, and have the office at another location. Kvalvog noted that he recently built his home in Moorhead, too. He is not an expert in planning, but believes this location would be perfect for storage units. He mentioned some of the other old commercial buildings, the dumping ground, an old farm, the buses, the radio station, and the cabinet business all south of this site. Their intent is to clean up the property and do a first class job on the construction. They decided on building their businesses in Moorhead rather than in West Fargo because they like Minnesota. They also mentioned the new commercial businesses (Hornbachers and Caseys) that are not too far to the north of this site.

Kristie Leshovsky, City of Moorhead Planner, stated that this area has been popular for inquiries in the last couple years. This is in the city's future growth and land use plans. There are some random uses along there and that is why the city put plans in place. The city established the Gateway Overlay District in 2006, required higher standards for building construction and landscaping within city limits and within 300 feet of established gateways which includes Highway 75 South. Currently, the city engineering department is looking at an assumption plan

for placing pipes of certain density for new infrastructure, which could be as early as next year. There is a developer wants to do a mirror image of the neighborhood west of the road, with all single family residences. Landowners usually petition the city for annexation. The applicants evidently purchased this site at the end of 2014 and were not aware of the overlay district. They approached Leshovsky about getting annexed into the city. Rural land costs are less and have no specials, making them more desirable parcels of land. Leshovsky added that she is here for information only and wants to abide by the long-range plan.

Magnusson stated that the applicant has already had conversations with Moorhead Township about their rezoning request. David Heng noted that he does not agree with the recommendation to deny this request. Chair Krabbenhoft asked if there was anyone present who wished to speak for or against the request.

On motion by Andrea Koczur, seconded by Amos Baer, and unanimously carried, the Planning Commission closed the public hearing.

Discussion ensued among the Planning Commissioners regarding the rezoning request and potential conflicts with the county and city comprehensive plans and goals. In reviewing the criteria and general review standards for amending zoning districts, there were concerns related to the following findings:

- Related to Overall Needs: The rezoning is reasonably related to the overall needs of the County and to the existing land use.
- Conflict with the Comprehensive Plan: the rezoning is not in conflict with the comprehensive plans of any township or city of the County or the County Land Use Plan.

On motion by Mike Hulett, seconded by Jenny Mongeau, and carried with two nay votes (Amos Baer and David Heng), the Planning Commission recommended denying the petition from BRB, LLC to rezone a 7.66-acre parcel from that is currently zoned Highway Commercial (HC) with an Urban Expansion District (UED) overlay zone. The request was to remove the UED overlay zone from the parcel. Said parcel fronts on 46th Avenue South, abutting the City of Moorhead, in the NW ¼ SE ¼ Section 29, Moorhead Twp. The recommendation was based on the following reason: The proposed zoning change and use is contrary to the Clay County Comprehensive Plan and the City of Moorhead 2009 Future Land Use Map (FLU) or Growth Area Plan (GAP). Said recommendation will be forwarded to County Board for final action.

On motion by Mike Hulett, seconded by Tom Jensen, and unanimously carried, the Planning Commission recommended having Tim Magnusson and Jenny Mongeau clarifying which parcels were appropriately zoned Highway Commercial in Section 29 Moorhead Township, and forwarding that information to County Board for action.

On motion by Tom Jensen, and seconded by Amos Baer, the meeting was adjourned at 10:05 p.m.